

2008 APR 17 PM 2:42

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LAWRENCE G. DUNBAR

April 15, 2008

Ms. LaDonna Castanuela  
Texas Commission on Environmental Quality  
Office of the Chief Clerk

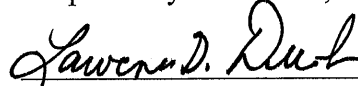
Re: **SOAH DOCKET NO. 582-07-0863; TCEQ DOCKET NO. 2006-1931-MSW**  
**Application of Waste Management of Texas Inc. For TCEQ Permit No.**  
**MSW-66B**

Dear Ms. LaDonna Castanuela:

Enclosed please find an original and eleven (11) copies of **Protestant TJFA'S Response to the Applicant's Exception to the Administrative Law Judge's Proposal for Decision.**

If you have any questions or concerns, please do not hesitate to contact me.

Respectfully Submitted,



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**ATTORNEY FOR PROTESTANT TJFA, LP.**

Enclosure  
CC: Service List  
SOAH ALJ

SOAH DOCKET NO. 582-07-0863  
TCEQ DOCKET NO. 2006-1931-MSW

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APPLICATION OF WASTE  
MANAGEMENT OF TEXAS, INC.  
FOR A MUNICIPAL SOLID WASTE  
PERMIT AMENDMENT;  
PERMIT NO. MSW-66B

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§  
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§

BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

CHIEF CLERKS OFFICE

**PROTESTANT TJFA'S RESPONSE TO THE APPLICANT'S EXCEPTION TO THE  
ADMINISTRATIVE LAW JUDGE'S PROPOSAL FOR DECISION**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY:

COMES NOW TJFA, L.P., hereinafter referred to as TJFA, one of the landowner  
Protestants in the above referenced matter, and hereby files its Response to the Applicant's  
exception to the ALJ's Proposal for Decision (PFD) and corresponding proposed ORDER issued  
March 18, 2008.

**I. SUMMARY ARGUMENT**

The Applicant has excepted to the ALJ's recommendation that the current operating  
hours of the existing landfill be expanded for the proposed landfill so as to be consistent with the  
Settlement Agreement that the Applicant entered into with Guadalupe County. The Applicant  
argues that the recommended hours in the PFD should only apply to "waste acceptance"  
operations and that all other operations, including those using heavy equipment, be allowed all  
day, any day. TJFA contends that the Applicant should be held to its agreement with the County  
that limits normal landfill operations, and agrees with the ALJ that there is no evidence that  
normal landfill operations demand longer hours.

**II. APPLICANT'S REQUEST FOR EXPANDING OPERATING HOURS IS NOT  
NECESSARY AND INCONSISTENT WITH THE SETTLEMENT AGREEMENT WITH  
THE COUNTY**

The Applicant filed an exception to the ALJ's PFD regarding operating hours for the proposed landfill. The Applicant had requested in its Permit Amendment Application (PAA) that the operating hours for the proposed landfill be changed from the current hours of operation for the existing landfill as provided for in the TCEQ rules to 24 hours a day, seven days a week (24/7). The ED has proposed such 24/7 operating hours in its Draft Permit, as requested by the Applicant (PFD p. 55). The ALJ, after hearing all of the evidence presented at the hearing, recommended in her PFD that the operating hours be expanded from the current hours of operation to those presented in the Settlement Agreement between the Applicant and Guadalupe County (PFD p. 57). The Applicant reached a settlement with the County in exchange for the County withdrawing from the contested case hearing as a protestant (CCL Ex. 5).

The Applicant has requested in its exception to the PFD that the recommended operating hours in the PFD and the Settlement Agreement not be accepted. Rather, the Applicant has submitted a proposal to limit "normal operating activities" referenced by the ALJ for her recommended operating hours to only include "waste acceptance", and allow all other landfill operating activities to be conducted 24 hours a day, seven days a week, all year long (Appl. Response to PFD, p. 2). This would allow twenty-four hour, seven days per week unrestricted use of the facility, with the exception of "waste acceptance". This could result for example in the landfill working face remaining uncovered after the operating hours in the Settlement

Agreement until and while compactors prepare the working face for the next day's waste delivery, causing noise and odor problems for nearby residents.

TJFA contends that adopting such a proposal as proposed by the Applicant is contrary to the intentions expressed by the County and the Applicant in their Settlement Agreement (PFD p. 56 and CCL Ex. 5 at 2). Such a proposal by the Applicant also is contrary to the ALJ's finding that there was "... no evidence that normal operations demand longer hours..." (PFD p. 57). Finally, expanding the hours of other landfill operations involving heavy equipment, besides "waste acceptance", would negate the ALJ's finding that "... continuous operations could be disturbing to nearby residents ..." (PFD Findings of Fact #96). TJFA supports the ALJ's recommendation that the proposed landfill operating hours be consistent with the Settlement Agreement.

The ALJ's recommendation to expand the current operating hours to those identified in the PFD and the Settlement Agreement were based on the expressed recognition and agreement with Protestants that "... continuous operations could be disturbing to nearby residents ..." (PFD p. 57). Obviously, normal operating activities at a landfill involving heavy, loud equipment occur besides those solely related to "waste acceptance". Such additional activities would include transporting materials in and out of the landfill site, constructing cells, placing cover on top of the waste, continuing to compact solid waste at the working face so that daily cover would not have to be applied to the working face outside waste acceptance hours, doing earth work (grading, excavation, etc.).

Thus, the ALJ and the Settlement Agreement clearly were referring to not only “waste acceptance”, but also transportation of materials on and off-site, as well as the use of heavy equipment, when placing restrictions on the landfill’s “operating hours”. These types of activities are recognized and specifically limited in their hours of operations in 30 TAC 330.118 for the very purpose of preventing disturbance of nearby residents.

The Applicant’s proposal is also not clear on what is meant by “waste acceptance”. It could be interpreted that “waste acceptance” means placing waste on or into the working face. It could allow trucks with waste to enter the facility and park until the required time allowed for unloading at the working face. This and an uncovered landfill working face during non-waste acceptance hours would lead to odor and vector problems.

Therefore, TJFA requests that the recommended operating hours as contained in the PFD and in the Settlement Agreement with the County be adopted by the Commission as being minimally compatible with the surrounding land use and nearby residents, if the Commission decides to approve this permit.

### **III. CONCLUSION**

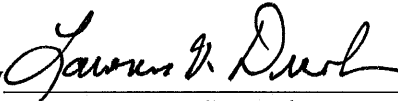
TJFA agrees with the recommendation of the ALJ in her PFD to revise the operating hours contained in the Draft Permit, as requested by the Applicant, to be consistent with the Settlement Agreement between the Applicant and Guadalupe County. Such operating hours as recommended by the ALJ are longer than currently available to the Applicant for the existing

landfill. There is no evidence that 24/7 operating hours are necessary. Further, such operating hours as requested by the Applicant would disturb nearby residents and should not be allowed.

WHEREFORE, PREMISES CONSIDERED, TJFA respectfully requests that the Commission issue an order denying this Application, but if this permit is to be issued, TJFA requests that the operating hours be at least consistent with the Settlement Agreement as recommended by the PFD.

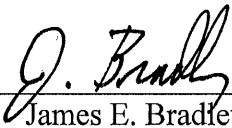
Respectfully submitted,

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by 

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**ATTORNEYS FOR PROTESTANT TJFA**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document has been served on the following via hand delivery, express mail, electronic mail, facsimile, and/or U.S. First Class Mail, on this the 16<sup>th</sup> day of April, 2008.

Hon. Sarah G. Ramos  
State Office of Administrative Hearings  
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*Administrative Law Judge, State Office of  
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